

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumers' Action Network (UCAN),

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

Case 02-01-007
(Filed January 7, 2002)

Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of Pacific Bell Telephone Company (U 1001 C), Pacific Bell Internet Services, and SBC Advanced Solutions, Inc. (U 6346 C) to Determine Whether They Have Violated the Laws, Rules and Regulations Governing the Inclusion of Charges for Products or Services on Telephone Bills.

Investigation 02-01-024
(Filed January 23, 2002)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

On January 7, 2002, the Utility Consumers' Action Network (UCAN) filed a complaint, Case (C.) 02-01-007, against Pacific Bell Telephone Company (Pacific Bell). UCAN's complaint sets forth various allegations concerning Pacific Bell's billing, customer service, disconnection and marketing practices, and tariff inadequacies, all relating to Pacific Bell's DSL service.

On January 23, 2002, the Commission filed its Order Instituting Investigation (I.) 02-01-024 into, among other things, various DSL and Internet service billing and customer service-related practices by Respondents Pacific Bell and its affiliates, Pacific Bell Internet Services (PBI) and SBC Advanced Solutions, Inc. (ASI).

Both the complaint and the investigation have been preliminarily designated as adjudicatory proceedings expected to require hearing. Assigned Administrative Law Judge (ALJ) McVicar consolidated the two proceedings by a ruling issued on February 8, 2002, and the ALJ and I conducted a prehearing conference on February 19, 2002. Pursuant to Rules 6(b)(3), 6(c)(1), and 6.3, I am issuing this ruling to meet the scoping memo and other requirements of the Rules.

Categorization

Pursuant to Rule 6(b), the Instructions to Answer preliminarily categorized the complaint case as an adjudicatory proceeding. Pursuant to Rule 6(c)(1), the Commission by I.02-01-024 preliminarily categorized its investigation as an adjudicatory proceeding. No party filed an appeal as permitted under Rule 6.4(a), so those determinations are now final. Ex parte communications are prohibited in adjudicatory proceedings pursuant to Public Utilities Code Section 1701.2(b) and Rule 7(b).

Need for Hearing

The Instructions to Answer and the investigatory order both determined that this matter is expected to go to hearing. All parties implicitly agreed at the prehearing conference. I concur.

Scope

The scope of the investigation is as established in I.02-01-024, Ordering Paragraph 1, and C.02-01-007. In the aggregate, the issues to be addressed are:

1. Did any or all of the Respondents violate Public Utilities Code Section 2890 by placing charges on a subscriber's telephone bill for products or services the purchase of which the subscriber did not authorize?
2. Did Pacific Bell violate Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015 which requires billing telephone companies to maintain accurate and up-to-date records of all customer complaints made to or received by them for charges for products or services provided by a third party, including corporate affiliates?
3. Did Pacific Bell violate Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015 which requires billing telephone companies to create a calendar month summary report of all customer complaints received each month for each service provider and billing agent for charges by a third party, including corporate affiliates, and provide it to the Director of Consumer Services Division quarterly?
4. Did Pacific Bell violate Code Section 702 by violating Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015?
5. Did Pacific Bell violate Code Section 2890 or D.00-03-020 as modified by D.00-11-015 by threatening customers with disconnection or toll restriction due to unpaid DSL charges?
6. Did Pacific Bell violate D.00-03-020 as modified by D.00-11-015 by failing to timely file and serve advice letters to conform its tariffs to the portions of those orders eliminating its authority to disconnect local service for nonpayment of interexchange service?
7. Should Pacific Bell and/or ASI be ordered to pay reparations pursuant to Code Section 734?

8. Should any or all of the Respondents be fined pursuant to Code Sections 2107 and 2108, or punished for contempt pursuant to Code Section 2113, for violations of the Public Utilities Code or other order, decision, rule, direction, demand or requirement of the Commission?

Timetable

After reviewing the case management statements filed by the parties, ALJ McVicar proposed a proceeding timetable at the prehearing conference and allowed all parties to comment on it. Considering the views expressed by the parties, the schedule will be:

April 22, 2002	CSD, UCAN & Intervenors' Prepared Direct Testimony
June 4, 2002	Pacific Bell, PBI and ASI's Responsive Testimony
June 14, 2002	CSD, UCAN & Intervenors' Rebuttal Testimony
June 24, 2002	Evidentiary Hearings Begin ¹
August 2, 2002	Opening Briefs
August 16, 2002	Closing Briefs and Case Submission
October 15, 2002	Presiding Officer's Decision

The ALJ may adjust the schedule as necessary during the course of the proceeding. In no event will resolution of this case exceed the 12-month deadline established by Section 1701.2(d).

Presiding Officer

ALJ McVicar is designated as the presiding officer (Rule 5(k)(1)).

Other Matters

This section addresses other matters intended to facilitate the conduct of this proceeding, some of which were suggested by the parties and discussed in the prehearing conference.

¹ Notice of specific hearing date(s), time(s), and location(s) are to be provided later.

The parties should be sensitive to the great inconvenience participating in this proceeding may cause customer witnesses, and should confer among themselves to minimize the number of customer witnesses who are to be subjected to deposition or cross-examination, and the duration of depositions and cross-examination. When Respondents serve their responsive testimony, they shall at the same time provide a list of customer witnesses they propose to call at evidentiary hearings. Thereafter, any party may by letter served on all parties make a request of the ALJ if special arrangements are needed for either time and date, or location, for any witness' testimony at evidentiary hearing. Parties are encouraged, but not required, to confer among themselves beforehand to coordinate such requests. The ALJ will consider those requests and make such hearing arrangements as he finds appropriate.

Discovery has the potential to be extensive and troublesome in this proceeding. Parties offered differing views on whether the scoping ruling should establish discovery rules relating to, e.g., discovery deadlines, discovery moratorium periods, and non-disclosure agreements. At this time, the only discovery-related requirements will be that (a) parties are to provide copies of each discovery request to all other parties at the time the request is sent; and (b) parties are to provide copies of their discovery responses to each party that makes a request for that specific response. Discovery disputes the parties are unable to resolve may be tendered to the Commission pursuant to the procedure set forth in Resolution ALJ-164.

This ruling will also require parties to provide electronic copies to the ALJ of all documents served in the proceeding, as further described in the ruling paragraph below. This includes, e.g., testimony served before the first day of hearing, written motions, responses, and briefs.

IT IS RULED that:

1. This is an adjudicatory proceeding.
2. This matter is expected to require an evidentiary hearing.
3. The issues to be addressed are those established in Order Instituting Investigation 02-01-024 and this ruling.
4. The timetable will be as set forth in this ruling.
5. Administrative Law Judge (ALJ) James McVicar is designated as the presiding officer.
6. When Respondents serve their responsive testimony, they shall at the same time provide a list of customer witnesses they propose to call at evidentiary hearings. Thereafter, any party may by letter served on all parties make a request of the ALJ if special arrangements are needed for either time and date, or location, for any witness' testimony at evidentiary hearing.
7. Parties are to provide copies of each discovery request to all other parties at the time the request is sent. Parties are to provide copies of their discovery responses to each party that makes a request for that specific response.
8. In addition to the standard hardcopy service required in Rule 2.3, parties shall provide to the ALJ an electronic copy of all documents served in the proceeding. This requirement does not apply in the case of documents which the serving party does not have in electronic form. Electronic documents may be provided by file attachment(s) e-mailed to the ALJ at jcm@cpuc.ca.gov, or any suitable alternate medium including CD-ROM or floppy disk. Files shall be in plain text or any common and easily-converted word processing or spreadsheet format, or any other format the ALJ agrees to accept.

Dated March 5, 2002, at San Francisco, California.

/s/ CARL WOOD

Carl Wood

Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated March 5, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.